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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, NOVEMBER 14, 2001

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE010422

Ex Parte: In the matter concerning
the Rules Governing Certification
and Maintenance of Notification Centers

ORDER PRESCRIBING
NOTICE AND INVITING COMMENTS

On July 30, 2001, the State Corporation Commission ("Commission") entered an Order establishing an investigation into the appropriate policies and rules governing the certification of notification centers and maintenance of acceptable levels of performance by such centers once they are certificated by the Commission.¹ The July 30, 2001, Order invited interested parties to file written comments on or before September 28, 2001, on the issues identified in Attachment A to the Order. Interested parties were encouraged to offer proposed

¹ Section 56-265.15 of the Underground Utility Damage Prevent Act ("Act") defines "notification center" as

an organization whose membership is open to all operators of underground facilities located within the notification center's designated service area, which maintains a data base, provided by its member operators, that includes the geographic areas in which its member operators desire transmissions of notices of proposed excavation, and which has the capability to transmit, within one hour of receipt, notices of proposed excavation to member operators by teletype, telecopy, personal computer, or telephone.

rules corresponding to the issues set forth in Attachment A to the Order. Additionally, the Commission's Order directed the Staff to file a report, summarizing and responding to the comments filed in the docket, and proposing revisions, where appropriate, to the present Rules Governing Certification of Notification Centers, 20 VAC 5-300-90 ("Rules") that were adopted in 1990.²

On November 9, 2001, the Staff filed its Report in which it summarized the filed comments, discussed the development of rules governing the certification of notification centers in Virginia, reviewed national "best practices" relative to certification and measuring the performance of a notification center after certification, proposed specific revisions and additions to the existing Rules Governing the Certification of Notification Centers, and discussed the proposed rules.

NOW UPON consideration of the comments, the Staff Report, the proposed rules, and the Underground Utility Damage Prevention Act ("the Act"), the Commission is of the opinion and finds that public notice should be given of the rules proposed by the Staff in its November 9, 2001, Report; that interested persons should be afforded an opportunity to file written

² See Commonwealth of Virginia, At the relation of the State Corporation Commission, Ex Parte: In the matter of adopting Rules Governing the Certification of Notification Centers Pursuant to § 56-265.16:1 of the Code of Virginia, Case No. PUE900033, 1990 S.C.C. Ann. Rept. 344.

comments or request a hearing on the proposed rules appended hereto as Appendix 1;³ that the notice of the proposed rulemaking should be published in newspapers of general circulation throughout the Commonwealth; and that this Order and proposed rules should be forwarded to the Registrar of Regulations for publication in the Virginia Register of Regulations.

Accordingly, IT IS ORDERED THAT:

(1) A copy of this Order, the proposed rules, and the November 9, 2001, Staff Report shall be made available for public review in the Commission's Document Control Center, located on the first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, during the Commission's regular hours of operation, Monday through Friday, from 8:15 a.m. to 5:00 p.m. Interested persons may also review a copy of the Order and Appendix 1 thereto on the Commission's website, <http://www.state.va.us/scc/caseinfo/orders.htm>.

(2) Interested persons may obtain a copy of this Order, together with a copy of the Staff report and the proposed rules upon which comment is sought (Appendix 1 hereto), by directing a request in writing for the same on or before December 20, 2001, to Massoud Tahamtani, Assistant Director, Division of Energy

³ The rules appearing in Appendix 1 to this Order have been revised to reflect minor changes and corrections and removal of a duplication of Rule 20 VAC 5-300-90 F 15 in the Staff Report in contemplation of publication in the Virginia Register of Regulations.

Regulation, State Corporation Commission, P.O. Box 1197,
Richmond, Virginia 23218. Such requests shall refer to Case
No. PUE010422.

(3) On or before December 28, 2001, any interested person
desiring to comment upon the proposed "Rules Governing the
Certification and Maintenance of Notification Centers", set out
in Appendix 1 hereto, shall file an original and fifteen (15)
copies of such comments in writing with the Clerk of the
Commission, c/o Document Control Center, P.O. Box 2118,
Richmond, Virginia 23218-2118, and shall refer to Case
No. PUE010422. The comments shall set forth the person's
interest in the proceeding, his comments on the rules, and if
such person objects to certain provisions of the proposed rules,
shall propose alternative language for the rules to which an
objection is made.

(4) Any interested person desiring a hearing in this
matter shall file an original and fifteen (15) copies of a
written request for hearing on or before December 28, 2001, with
the Clerk of the Commission and shall state in detail why a
hearing is necessary. Such request shall identify the factual
issues likely to be in dispute upon which the interested person
seeks a hearing, together with the evidence expected to be
introduced at any hearing convened by the Commission. Requests
for hearing shall refer to Case No. PUE010422, and shall be

directed to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, and shall refer to Case No. PUE010422. If no sufficient request for a hearing is received, the Commission may enter an Order promulgating rules based upon the written pleadings and comments filed herein.

(5) On or before December 1, 2001, the Commission's Division of Information Resources shall cause the following notice to be published as classified advertising on one occasion in newspapers of general circulation throughout the Commonwealth of Virginia:

NOTICE TO THE PUBLIC OF PROPOSED
REVISIONS TO THE RULES FOR
CERTIFICATION AND MAINTENANCE OF
NOTIFICATION CENTERS - CASE NO. PUE010422

Section 56-265.16:1 of the Code of Virginia was amended effective July 1, 2001, by the 2001 General Assembly. As amended, § 56-265.16:1 of the Code of Virginia, among other things, directs the Commission in approving or revoking a notification center certification to: (i) ensure protection for the public from the hazards that the Underground Utility Damage Prevention Act, Chapter 10.3 (§ 56-265.14 et seq.) of Title 56 of the Code of Virginia ("the Act") is intended to prevent or mitigate; (ii) ensure that all persons served by the notification center receive an acceptable level of performance, which level of performance shall be maintained throughout the period of the notification center's certification; and (iii) require the notification center and its agents to demonstrate financial responsibility for any

damages that may result from the violation of any provision of the Act. According to § 56-265.16:1, such requirement may be met by purchasing and maintaining liability insurance on such terms and in such amounts as the Commission deems appropriate.

A notification center is an organization whose membership is open to all utility operators ("operators") of underground utility lines located within the notification center's designated service area. The notification center maintains a data base, provided by its member operators, that includes the geographic areas in which its member operators desire transmissions of notices of proposed excavation. The notification center notifies the operators when proposed excavations are planned in locations where operators have underground utility facilities.

The Commission's present Rules Governing Certification of Notification Centers, 20 VAC 5-300-90 ("Rules"), were adopted in 1990, before the amendment of § 56-265.16:1 of the Code of Virginia. The Commission's July 30, 2001, Order Establishing Investigation and Inviting Comments directed the Commission Staff to file a report proposing revisions to these Rules, where appropriate. On November 9, 2001, the Commission Staff filed its Report, setting forth its recommended revisions to the Rules ("proposed rules"). The Rules proposed by the Staff affect the certification of notification centers and maintenance of acceptable levels of performance by a notification center once a center is certificated and thus impact operators, excavators, notification centers, and other members of the public who may be expected to utilize the services of the notification center. Therefore, the Commission is inviting comments and requests for hearing on the Rules proposed by the Commission Staff.

A copy of the Order Prescribing Notice and Inviting Comments, the November 9, 2001, Staff Report, together with the proposed rules upon which comment is sought, may be reviewed from 8:15 a.m. to 5:00 p.m., Monday through Friday, in the State Corporation Commission's Document Control Center, at 1300 East Main Street, Tyler Building, First Floor, Richmond, Virginia 23219. Interested persons may obtain a copy of the Commission's Order and the proposed rules under consideration, together with the Staff Report, by directing a written request for the same on or before December 20, 2001, to Massoud Tahamtani, Assistant Director, Division of Energy Regulation, State Corporation Commission, P.O. Box 1197, Richmond, Virginia 23218. Such requests shall refer to Case No. PUE010422. Interested persons may also obtain a copy of the Order and proposed rules attached thereto from the Commission's website, <http://www.state.va.us/scc/caseinfo/orders.htm>.

Any interested person who wishes to comment upon the proposed rules (Appendix 1 to the Commission's Order Prescribing Notice and Inviting Comments) shall file on or before December 28, 2001, an original and fifteen (15) copies of such comments with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and shall refer to Case No. PUE010422. The comments should set forth the person's interest in this proceeding, any comments on the rules, and if the comments object to certain provisions in the proposed rules, recommend alternative language for those rules to which an objection is made.

Any interested person desiring to request a hearing in this matter shall file an original and fifteen (15) copies of a written request for hearing with the Clerk of the Commission at the address set forth above on or before December 28, 2001, and shall state in detail why a hearing is

necessary. Any request for hearing should identify the factual issues upon which the interested person seeks hearing, together with the evidence expected to be introduced if a hearing is convened. If no sufficient request for hearing is received, the Commission may enter an Order promulgating rules based upon the comments and the written pleadings filed in this proceeding.

All communications to the Commission regarding this proceeding should be directed to the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, and should refer to Case No. PUE010422.

THE DIVISION OF ENERGY REGULATION
OF THE STATE CORPORATION COMMISSION

(6) The Commission's Division of Information Resources shall forthwith cause this Order, together with the proposed rules (Appendix 1 hereto) to be forwarded to the Registrar for publication in the Virginia Register of Regulations.

(7) The Commission's Division of Information Resources shall promptly file with the Clerk of the Commission the proof of the newspaper publication required in Ordering Paragraph (5) herein.

CHAPTER 300.

ENERGY REGULATION; IN GENERAL.

20 VAC 5-300-90. Rules governing certification and maintenance of notification center or centers.

A. The purpose of this section is to facilitate the filing of applications by those desiring to serve as a notification center pursuant to §56-265.16:1 of the Code of Virginia as amended by ~~House Bill No. 720 of the 1989~~ the 2001 Session of the General Assembly, effective July 1, ~~1990~~ 2001. These rules further detail certain standards and requirements for operation and maintenance of the notification center or centers.

B. An original and 15 copies of an application for certification shall be filed with the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118 Richmond, Virginia ~~23216~~ 23218 and shall contain all the information and exhibits required herein.

C. Notice of the application shall be given to the public, governmental officials and to utility operators within the applicant's proposed area as required by the Commission in its initial order docketing the case for consideration.

D. An applicant shall submit information which identifies itself, including (i) its name, address and telephone number (ii) its corporate ownership (iii) the name, address and telephone number of its corporate parent or parents, if any, (iv) a list of its officers and directors, or if the applicant is not a corporation, a list of its principals and their directors if said principals are corporations, and (v) the names, addresses and telephone numbers of its legal counsel.

E. Each application shall be accompanied by maps depicting the areas of the Commonwealth in which the applicant proposes to act as a notification center. These maps and certificates for notification centers, when granted, will be retained on file in the Commission's Division of Energy Regulation.

F. Each application shall demonstrate that the applicant fully qualifies as a notification center. ~~A~~ At a minimum, a notification center is one that:

1. ~~May be~~ Is capable of being contacted by means of a toll-free telephone call, teletype, telecopy or personal computer from any point within the Commonwealth;
2. Is open to participation by any operator of underground ~~facilities~~ utility lines within the service area sought as set out in §56-265.15 of the Code of Virginia;
3. Is capable of making the filings required by §56-265.16:1 of the Code of Virginia;
4. Is capable of providing emergency service 365 days a year, 24 hours per day and capable of providing regular service Monday through Friday 7:00 a.m. through 5:00 p.m., excluding ~~designated~~ legal state and national holidays;
5. Shall maintain such telecommunications equipment necessary to ensure a minimum level of ~~response acceptable to the participating operators and to users of the service~~ performance as detailed in these rules;

6. Has the capability to transmit, within one hour of receipt, notices of proposed excavation to member operators by teletype, telecopy, personal computer, or telephone;
7. Has the capability to transmit, within five minutes of receipt, notice of emergency excavation to member operators by teletype, telephone, facsimile, personal computer, or telephone;
78. Is capable of maintaining equipment adequate to voice record all incoming call and retain such records for a minimum of six years and is capable of recording all transmissions (tickets or notices) of proposed excavations to member operators and retaining those records for a minimum of six years;
89. Shall maintain ~~an adequate level of~~ liability insurance coverage of such terms and amounts deemed appropriate by the Commission;
910. Shall maintain detailed maps and other electronic means depicting areas with underground utility ~~facilities~~ lines and shall be able to pass on to operators the specific site address of a proposed excavation using multiple types of points of reference such as street addresses where those exist or, where addresses do not exist, the distance and direction to the nearest intersection of named or numbered public roads, latitude/longitude, and highway/railroad/pipeline mile markers, etc.; ~~and~~
4011. Shall notify those calling about proposed excavations of the time frame within which an operator must respond and mark its facilities; ;

12. Shall provide the caller with the ticket number, and the names of operators who will be notified for each locate request;
13. Has a comprehensive and documented operating plan. Such plan shall detail the center's organizational structures, corporate form, the center's governing structure, personnel qualification criteria, operating budget and financial resources, description of physical facilities, description of computer hardware and software systems, description of the communication facilities, description of the center's security and protection components, and procedures designed to ensure compliance with these rules;
14. Has the capability to time and date stamp responses to the Ticket Information Exchange (TIE) System provided by operators and contract locators;
15. Has the capability of interactive data communication to permit remote data entry for member operators and excavators;
16. Has a formal and effective training program for its employees;
17. Has procedures and practices designed to reduce over-notification;
18. Has a detailed disaster recovery plan which, when implemented, enables the center to continue acceptable operation during a disaster;
19. Has a plan detailing the center's performance standards for the purpose of promoting accuracy, cost effectiveness, operational efficiency, and customer satisfaction. This plan shall detail key indices used to measure

the center's performance. These measures shall include: Average Speed of Answer, Abandoned Call Rate, Busy Signal Rate, Customer Satisfaction Rate and Locate Request Delivery criteria. The performance level recommended by "Best Practices" shall be achieved by the center. The center shall provide to the Commission, periodic reports no less frequently than once a quarter detailing the various performance measures achieved by the center; and

20. Has procedures to regularly verify with the operators the data received from the operators that will allow proper notification.

G. ~~Except as provided in Subsection I, only~~ Only one notification center will be granted a certificate for a given geographic area.

H. No certificated notification center shall abandon or discontinue service to the public or any part thereof except with the approval of the Commission and upon such terms and conditions as prescribed. The relationships between centers and operators of underground facilities are governed by their own agreements and not by this section or by the Commission.

~~I. — An application for a certificate may be submitted for any geographic area (i) for which a certificate has been previously granted by the Commission, or (ii) in which a notification center exempt from the requirements of §56-265.16:1 of the Code of Virginia is currently operating, if such application is supported by the operators of the underground facilities responsible for more than half of the ticket volume applicable to Virginia of the existing notification center during the most recent 12-month period preceding the filing of the application for which data is available. If the Commission determines that a certificate should be granted to~~

~~the applicant hereunder, the certificate previously issued for the same geographic area shall terminate as of the effective date of the new certificate.~~

I. Only one toll-free number shall be used across the Commonwealth to contact the notification center or centers regarding proposed excavation.

J. Excessive complaints against a certificated notification center or violations of this section shall be grounds for suspension or revocation of the notification center's certificate. In all proceedings pursuant to this section, the Commission shall give notice to the notification center of the allegation against it and shall provide the center with an opportunity to be heard concerning those allegations prior to the suspension or revocation of the center's certificate.

K. The certificated notification center or centers devise an effective public education/awareness plan regarding underground utility damage prevention as required by §§ 56-265.16:1 E and 56-265.32 B of the Code of Virginia.

L. The certificated notification center shall notify the Commission in writing when it proposes to change its agent or vendor that provides the primary notification function. This notification shall be provided 60 days prior to the planned change.

M. The plans, procedures, and information required by subdivisions F 13 and F 16 through F 20 shall be filed with the Commission with an application for certification of a notification center or upon a request from the Commission. Thereafter, updates to these plans shall be filed with the Commission within 30 days of any substantial change to the plans, procedures, and information required by these rules.

N. The certificated notification center shall file with the Commission information required by subdivisions F 13 and F 16 through F 20, and any other information (experience,

financial capability, insurance coverage, etc.) that demonstrates the center's agent or vendor providing the primary notification service is fully qualified.

O. The codes and subcodes used for the operation of the TIE system shall be reviewed and approved by the Commission's Damage Prevention Advisory Committee.

P. The center's governing body shall be made up of representatives of all stakeholders including various utility types, excavators, locators, local governments and the Virginia Department of Transportation. Persons serving on the center's governing body shall be knowledgeable of the operation of the center and be committed to Virginia's damage prevention program.

~~K.~~ Q. The Commission may conduct hearings as necessary to grant, amend, suspend, or revoke certificates and as necessary to enforce this section or the provisions of Chapter 10.3 (§ 56-265.14 et seq.) of Title 56 of the Code of Virginia.